2005

Daniel Carter v. University of Utah Medical Center : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH SUPREME COURT	
DANIEL CARTER, individually and on behalf of the heirs of MARJORIE CARTER and on behalf of the estate of MARJORIE CARTER, Plaintiff/Appellee, vs. UNIVERSITY OF UTAH MEDICAL CENTER, Defendant/Appellant, and CRESTWOOD CARE CENTER, Defendant.	Case No. 2005-1087-SC District Court No. 050901842
BRIEF OF APPELLANT	
APPEAL FROM A DECISION OF THE SECOND JUDICIAL DISTRICT COURT HONORABLE ROGER S. DUTSON	

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STATEMENT OF JURISDICTION

This is an interlocutory appeal of an order of the Second Judicial District Court in a civil case. This Court's jurisdiction is based upon Utah Code Annotated, Section 78-2-2(3)(j).

RELEVANT STATUTES AND RULES

Defendant cites as the relevant statute Utah Code Annotated Section 63-30d-502. That citation is not correct. Mrs. Carter died in 2003. Section 63-30d-502 did not take effect until July 1, 2004. Therefore, the relevant statute is Section 63-30-17 although in this case the language is the same.

UTAH CODE ANNOTATED SECTION 63-30-17:

> Actions against the state may be brought in the county in which the claim arose or in Salt Lake County. Actions against a county may be brought in the county in which the claim arose, or in the defendant county, or, upon leave granted by a district court judge of the defendant county, in any county contiguous to the defendant county. Leave may be granted ex parte. Actions against all other political subdivisions including cities and towns, shall be brought in the county in which the political subdivision is located or in the county in which the claim arose.

UTAH CODE ANNOTATED SECTION 78-13-7:

> In all other cases the action must be tried in the county in which the cause of action arises, or in the county in which any defendant resides at the commencement of the action; provided, that if any such defendant is a corporation, any county in which such corporation has its principal office or place of business shall be deemed the county in which such corporation resides within the meaning of this section. If none of the defendants resides in this state, such action may be commenced and tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the state, such action may be tried in any county where any of the parties

resides or service is had, subject, however, to the power of the court to change the place of trial as provided by law.

STATEMENT OF THE CASE

1. In November, 2002, Mrs. Carter underwent hip revision surgery at the University of Utah Medical Center. Thereafter, she was released to the Manorcare Nursing Home in Ogden where she had a fall in late December, 2002. That fall damaged her newly revised hip and began a series of treatments and operations at the University of Utah Medical Center.

2. A lawsuit has been filed against Manorcare alleging its negligence relating to the fall. That claim has now been consolidated with plaintiff's claims against the University of Utah Medical Center and the Crestwood Care Center.

3. Between January 30, 2003 and February 15, 2003 when Mrs. Carter was diagnosed with a MRSA (Methicillin Resistant Staph Aureus) staph infection, which contributed to or lead to her death, Mrs. Carter received medical treatment at both the University of Utah Medical Center and the Crestwood Care Center.

4. A MRSA staph infection is primarily regarded as a nosocomial infection, meaning in this instance a staph infection acquired in a hospital or nursing care setting due to improper sterile techniques or practices.

5. The incubation period for the MRSA infection, diagnosed in Mrs. Carter on February 15, 2003, is consistent with her medical treatment stays at the University of Utah Medical Center and/or the Crestwood Care Center.

6. During the critical periods of time for incubation of the MRSA staph infection, Mrs. Carter was in the University of Utah Medical Center or the Crestwood Care Center. So, to a high degree of probability, she contracted her infection in one facility or the other.

7. Defendants Crestwood Care Center and Manorcare Care Center are both located in Ogden, Utah. Any claims against each arose in Weber County, these defendants have their principal places of business in Weber County, and venue is, therefore, proper against both in Weber County.

8. Mrs. Carter's fall, her medical treatment, operations, hospital and nursing home care are interrelated events leading to her death in August, 2003. One trial is the proper and efficient way to resolve this case.

SUMMARY OF THE ARGUMENT

Section 63-30-17, Utah Code Annotated simply does not speak to the issue of venue when there are multiple defendants including the state causing or contributing to an injury, death or other claim. The only statutory venue provision which specifically addresses multiple defendant situations is Section 78-13-7 which places proper venue in the county in which any defendant resides.

A review of the Utah Legislature's enactment and passage of Senate Bill 4, 1965 which created the governmental immunity act Section 63-30-1 et seq., Utah Code Annotated, and contained what became Section 63-30-17 reveals nothing to indicate that

the Legislature ever discussed venue in multi-defendant cases or that it intended Section 63-30-17 to supplant Section 78-13-7 in multi-defendant cases.

Public policy reasons do not support the notion that it is an extraordinary or unusual burden for the University or other agency of state government to have to defend multi-defendant cases in a county other than Salt Lake County.

ARGUMENT

POINT I. NOTHING IN THE ENACTMENT OF SENATE BILL 4, 1965 WHICH BECAME THE UTAH GOVERNMENTAL IMMUNITY ACT LEADS TO THE CONCLUSION THAT THE LEGISLATURE INTENDED TO LIMIT VENUE AGAINST THE STATE IN MULTI-DEFENDANT SITUATIONS TO SALT LAKE COUNTY.

The Utah Government Immunity Act was enacted by the Legislature in 1965 to become effective on July 1, 1966. What became the Governmental Immunity Act originated as Senate Bill 4 in 1965. The Senate Judiciary Committee notes no longer exist but the conceptual basis for the legislation is set forth in the Senate Judiciary Committee report dated January 14, 1965.

> January 14, 1965
>
> Mr. President:
>
> Your Committee on the Judiciary to which was referred S.B. No. 4, by Messrs. Welch and M. Jenkins, has carefully considered said bill and reports the same act favorably for the following reasons:
>
> 1. It is the opinion of the Judiciary Committee that the ancient doctrine of governmental immunity based on the concept that the king can do no wrong should be basically modified in modern society.
>
> 2. Said act serves to allow the citizens of the State of Utah equitable remedy in the Courts where they have been

damaged.

3. Said act empowers government units to protect themselves by the purchase of insurance.

4. The passage of said act is in the best interests of the citizenship of this State.

Respectfully
Oscar W. McConkie, Jr.
Chairman

Senate Journal, Utah 1965, p.101

Legislators wanted citizens of this state to have some method of redress against the state for injury claims and authorized the state to protect itself by purchasing insurance.

In none of the audio tape discussions about the bill is there any indication that the Legislature intended to supplant Section 78-13-7 by making Salt Lake County the exclusive venue in multi-defendant cases where one defendant is the state or an arm of the state and other necessary defendants reside or acted outside Salt Lake County. Further, nothing in the governmental immunity act itself indicates any regard for or consideration about the multi-defendant situation.

This was precisely the situation that the Michigan Court of Appeals faced in the case of Hoffman v. Bos, 224 N.W.2d 107 (Mich App.). Plaintiff had been injured in a motorcycle accident. She brought suit against Bos the operator of the motorcycle, Honda Motor Co. and the road commission of Barry County, Michigan in the Kent County Circuit Court. Michigan had a general venue statute which addressed multiple defendant situations and a statute which said substantively that you must sue a governmental unit in the county where it exercises its governmental authority but which did not address a

multi-defendant situation. Barry County therefore moved for a change of venue out of Kent County and to Barry County arguing it could only be sued in the Barry County Circuit Court.

In that situation, the Michigan Court of Appeals recognized that standard rules of statutory construction are not persuasive in resolving the conflict because such rules of construction lead to opposite results - i.e. one can argue persuasively that by not mentioning or referring to multi-defendant cases in the county government venue statute the legislature intended to keep intact the existing statute which does refer to multi-defendant venue or that by enacting a county government venue statute that the legislature intended to mandate only one venue.

The Court also recognized that the same public policy arguments raised by the University of Utah Medical Center - - the added cost and inconvenience of requiring governmental units to defend themselves in distant counties are offset by the strong public policy reasons justifying trying all grievances in a single suit especially in this modern day when dockets are crowded and with "the development of modern communication and ease of transportation" the significance of the added cost and inconvenience argument has diminished in substance.

Ultimately, the Michigan Court of Appeals came down on the practical side of recognizing that the minority of cases involving governmental entities are multi-defendant cases. Therefore, in those situations venue would lie in any appropriate county

where a defendant resides or the cause of action arose. And, in the majority of cases exclusively against a governmental unit suit must be brought in the county where the governmental unit exercises its authority. In substance, the court harmonized the language of both sections by permitting each section to do exactly what its language specified without deeming an additional, but unspecified intent into the governmental venue statute.

POINT II. TO RULE THAT SALT LAKE COUNTY IS THE EXCLUSIVE VENUE FOR SUITS INVOLVING THE STATE, WITHOUT EXCEPTION, CREATES AN INHERENT CONFLICT IN THE VENUE PROVISIONS OF SECTION 63-30-17 AND SECTION 63-30d-502.

Section 63-30-17 and now 63-30d-502 both contain language that says actions against the State may be brought in the county in which the claim arose or in Salt Lake County; claims against counties may be brought against a county in which the claim arose or in the defendant county or a contiguous county; but actions against all other political subdivisions including cities and towns "shall be" brought in the county in which the political subdivision is located or in the county in which the claim arose.

In our modern world, the conflict this language creates if the University of Utah Medical Center's exclusive venue argument is accepted is obvious. Recently, a Nevada police officer was speeding, collided with four people from Utah and killed them. Change the location of that accident to Ogden City and the statutory conflict jumps out. An Ogden City policeman, without justification is speeding and collides with a car

carrying four Ogden City residents. They are severely injured and life-flighted to the University of Utah Medical Center. There one of the injured people is given a blood thinner but the drug isn't properly monitored and the injured person bleeds to death. Claims for the injuries and death therefore lie against Ogden City for the actions of its officer and against the University of Utah Medical Center for medical negligence. The claims should logically and necessarily be tried in one lawsuit.

However, if the University's interpretation of Sections 63-30-17 and 63-30d-502 is accepted, without exception, either you must force the claim against Ogden City to be tried in Salt Lake County, which explicitly violates the mandatary statutory language or you must separate the claims entirely and try two different cases in two different counties on the same set of operative circumstances which makes no sense in time or money to the court system or the parties.

The simple and obvious way to avoid this circumstance is to follow the venue language of Sections 63-30-17 and 63-30d-502 when a governmental unit is the sole defendant, consistent with the explicit language of those sections, and to follow the venue language of Section 78-13-7 in multi-defendant situations otherwise you force a "chaotic multiplicity of litigation" Lawless v. Village of Park Forest South, 438 N.E.2d 1299 (Ill App. 1982). Such a ruling harmonizes the explicit language of both statutory provisions.

In the Lawless case, plaintiff brought suit for trespass to land against multiple cities and city officials. Illinois had a government venue statute which said "Actions must

be brought against...a...municipal...corporation in the county in which its principal office is located." Therefore, all the separate defendants moved to force the transfer of the case to their respective home counties. The Court of Appeals observed: "The result would be division of this case into multiple cases." The court evaluated the ramifications of the defendants' arguments and said "acceptance of defendants' interpretation of section 2-103(a) would create judicial chaos. In this case, application of defendants' theory would lead to two separate cases. Situations can easily be postulated in which far more than two separate cases would have to be created."

The Court rejected defendants' theory saying that in cases involving multiple governmental units insisting on venue in their own county must yield to having the case tried in one proceeding regardless of the statutory language.

Interestingly, the Lawless court in its 1982 decision cited to cases in the State of Florida which had accepted the argument that you must separate the case into multiple cases and criticized that procedure. Then, in 1983, the Florida Supreme Court in the case of Board of County Commissioners of Madison County v. Grice, 483 So.2d 392 (1983) citing Lawless reversed prior decisions and recognized that the home venue privilege for government entities is not absolute but must yield to a single proceeding when a governmental body is sued as a joint tortfeasor.

The same reasoning applies with equal force in the case at issue. Accepting the defendant's position would force this same case to be tried twice in two separate counties

at a cost of twice the time and twice the expense. Certainly our legislature never intended such a result.

POINT III. PUBLIC POLICY CONSIDERATIONS SUPPORT AN ENTIRE CASE BEING TRIED IN ONE PROCEEDING AND CONCERNS OF UNDUE CONVENIENCE NO LONGER PREVAIL IN OUR MODERN SOCIETY.

Defendant contends it is unduly burdensome for it to be sued outside Salt Lake County. An examination of defendant's website shows it currently operates clinics in Davis, Utah, Tooele and Salt Lake Counties and conducts outreach programs in schools and on Indian reservations throughout the State. Clearly, this particular defendant can reasonably anticipate being sued in any county in the State. On its face the inconvenience and overly burdensome argument fails.

However, the cases of Lawless v. Village of Park Forest South; Board of County Commissioners of Madison County v. Grice; Hoffman v. Bos; and Peaceman v. Cades, 416 A.2d 1042 (Pa. Super. 1980) (superceded by statutory amendment) uniformly recognized that governmental officers are, in this modern age of communication and travel, no different from any other citizens who may be forced to travel in order to defend lawsuits in counties other than where they reside. The burden to the University of defending a claim in Weber County, when it already operates a clinic in Davis County, and outreach programs statewide, presumptively including Weber County, seems very slight, indeed if any burden at all.

Defendant cites only to the case of Abshire v. State of Louisiana, 636 So.2d 627, a 1994 decision by the Third Circuit Court of Appeals for the State of Louisiana bucking the above trend which ruled that state officials could only be sued when their ministerial actions were being called into question in Baton Rouge, the State capitol. That holding was based upon unique statutory language in Louisiana and was in conflict with other decisions by other state circuit courts of appeal in Louisiana. It is a distinguishable case.

CONCLUSION

Section 63-30-17 simply does not address multi-defendant cases and there is no legislative history suggesting that it was intended to do so. Section 78-13-7, however, does and is, in fact, the only venue statute which does specifically address multi-defendant cases. The court should rule that when the state defendant is the sole defendant and the claim did not arise elsewhere Salt Lake County is the exclusive venue consistent with Sections 63-30-17 and 63-30d-502. However, when there are multiple defendants, one of whom is the state, Section 78-13-7 is the controlling provision.

DATED this 31 day of March, 2006.

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CERTIFICATE OF MAILING

I hereby certify that on this 31st day of March, 2006, I mailed a true and correct copy of the above and foregoing Brief of Appellee, postage prepaid to:

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